**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
WASHINGTON, D.C., 20460

MAY 01 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Bill Rogers
Vice-President and General Manager
Keystone Automotive Operations, Inc.
44 Tunkhannock Ave
Exeter, PA 18643-1221

Re: Notice of Violation of the Clean Air Act

Dear Mr. Rogers,

The United States Environmental Protection Agency ("EPA") has investigated and continues to investigate Keystone Automotive Operations, Inc. ("Keystone") for compliance with the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. As summarized in this Notice of Violation ("NOV"), the EPA has determined that Keystone offered for sale and/or sold parts or components that have a principal effect of altering or bypassing emission control systems or elements of design on motor vehicles or motor vehicle engines. Such emission control systems and elements of design are installed by vehicle or engine original equipment manufacturers ("OEM") in order to comply with CAA emission standards. The EPA has also determined that Keystone knew or should have known that these parts or components were offered for sale or installed for such use or put to such use. Therefore, Keystone violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

Law Governing Alleged Violations

This NOV arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. In creating the CAA, Congress found, in part, that "the increasing use of motor vehicles...has resulted in mounting dangers to the public health and welfare."[1] Congress' purpose in creating the CAA, in part, was "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution."[2]

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[1] CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).
[2] CAA § 101(b)(1)-(2), 42 U.S.C. § 7401(b)(1)-(2).

The EPA's allegations here concern parts or components for motor vehicles and engines subject to emission standards.[3] The CAA requires the EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or new motor vehicle engines that cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.[4] As required by the CAA, the emission standards "reflect the greatest degree of emission reduction achievable through the application of [available] technology."[5] There are specific emission standards for each of these motor vehicles and engines for each pollutant and year of manufacture.[6]

The CAA makes it a violation "for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use."[7] It is also a violation to cause any of the foregoing acts.[8]

EPA Certification Program

The EPA administers a certification program to ensure that every motor vehicle and motor vehicle engine introduced into United States commerce satisfies applicable emission standards. Under this program, the EPA issues certificates of conformity ("COCs"), and thereby approves the introduction of motor vehicles or motor vehicle engines into United States commerce. To obtain a COC, a vehicle manufacturer must submit a COC application to the EPA for each engine family or test group of vehicles that it intends to enter into United States commerce.[9] The COC application must include, among other things, identification of the covered engine family, a description of the motor vehicle or engine and its emission control systems, all auxiliary emission control devices ("AECDs")[10] and the engine parameters they sense, as well as test results from a test vehicle or engine showing that it satisfies the applicable emission standards.[11]

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[3] *See generally* 40 C.F.R. Part 86, Subpart A (setting emission standards for these categories).
[4] CAA §§ 202(a)(1) and (3)(B), 42 U.S.C. §§ 7521(a)(1) and (3)(B).
[5] CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).
[6] *See, e.g.*, heavy-duty diesel engine emission standards at 40 C.F.R. §§ 86.004-11, 86.007-11, 86.099-11 and light-duty vehicle emission standards at 40 C.F.R. § 86.1811-04. *See also* 40 C.F.R. §§ 86.090-8 (1990 and later model year light-duty vehicles); 86.094-9 (1994 and later model year light-duty trucks); 86.001-9 (2001 and later model year light-duty trucks); 86.004-9 (2004 and later model year light-duty trucks); 86.091-10 (1991 and later model year Otto-cycle heavy-duty engines and vehicles); 86.008-10 (2008 and later model year Otto-cycle heavy-duty engines and vehicles).
[7] CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).
[8] CAA § 203(a), 42 U.S.C. § 7522(a).
[9] *See* 40 C.F.R. §§ 86.004-21 and 86.1844-01. Motor vehicles can be certified in a motor vehicle test group or engine family. For simplicity, for the remainder of this NOV, EPA will use the nomenclature "motor vehicles" to refer to both motor vehicles and motor vehicle engines.
[10] An AECD is "any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system." 40 C.F.R. § 86.082-2.
[11] 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.096-21; *see also* EPA, *Advisory Circular Number 24-3: Implementation of Requirements Prohibiting Defeat Devices for On-Highway Heavy-Duty Engines* (Jan. 19, 2001).

Motor vehicle manufacturers employ many devices and elements of design to meet emission standards to obtain COCs. *Element of design* means "any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine."[12] For example, manufacturers employ retarded fuel injection timing as a primary emission control device for emissions of oxides of nitrogen ("NOx"). Manufacturers also employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air. For diesel-fueled motor vehicles, these devices include diesel particulate filters ("DPF"), exhaust gas recirculation ("EGR"), diesel oxidation catalysts ("DOC"), and selective catalytic reduction ("SCR"). All modern motor vehicles are equipped with electronic control modules ("ECMs"). ECMs continuously monitor engine and other operating parameters and control the emission control devices, such as the fueling strategy.

Also, an onboard diagnostic system ("OBD") with the capacity to detect, identify and record malfunctions must be installed and operated on motor vehicles under section 202(m) of the CAA, 42 U.S.C. § 7521(m), and the implementing regulations.[13] Manufacturers are required to demonstrate (using EPA-specified test procedures) that the OBD system detects and identifies malfunctions, including any sensor or other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system, including the oxygen sensor on vehicles equipped with an oxygen sensor.[14] Oxygen sensors are categorized in EPA's regulations as a "major" diagnostic monitor tracked by an OBD system, along with monitors for the catalyst/exhaust aftertreatment devices, engine misfire, and evaporative leaks.[15]

Alleged Violations

The EPA has determined that Keystone offered for sale and/or sold parts or components that have a principal effect of altering or bypassing emission control systems or elements of design on motor vehicles. Keystone sold four main categories of these "defeat device" products: EGR removal kits, catalytic converter delete pipes ("delete pipes"), aftermarket ECM programmers ("tuners"), and air pump idler brackets. Keystone sold a total of 15,367 parts for multiple vehicle makes, models, and years. The EPA's findings regarding Keystone sales transactions involving defeat devices from January 1, 2015 to October 15, 2017, are summarized in Table 1 below:

[12] 40 C.F.R. § 86.1803-01. *See also* 40 C.F.R. § 86.094-2.
[13] *See* 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806–05; and § 86.1806-17 (for model year 2017 and later vehicles).
[14] *See* 40 C.F.R. § 86.1806–05(i).
[15] *See id.* (using the more general term "exhaust aftertreatment devices" and including diesel exhaust gas recirculation, if equipped).

**Table 1: Summary of Alleged Keystone Violations**

| Defeat Device Product | Effect on Motor Vehicle and Engine Emission Control Systems and Elements of Design | Approximate Quantity of Defeat Device Products Sold |
|---|---|---|
| Aftermarket ECM Programmers ("Tuners") | Change, affect, modify, bypass, render inoperative, or allow for the deletion of DOC, DPF, EGR, and/or SCR systems, or OBD codes, sensors, signals, or records related to these systems; and/or alter ECM fuel or ignition timing maps. | 10,644 |
| Delete Pipes | Remove and bypass DOC, DPF, and/or SCR systems. | 2,999 |
| EGR Removal Kits | EGR system removal and/or bypass. | 1,261 |
| Air Pump Idler Bracket | Air pump removal and/or bypass. | 436 |
| **TOTAL** | | **15,367** |

The 1,261 EGR removal kits, 2,999 delete pipes, 10,644 tuners, and 463 air pump idler brackets that Keystone sold are detailed in Attachment A. Based on information that Keystone has provided, Keystone currently holds 992 of these parts in inventory.

Keystone knew or should have known that these products were sold and/or offered for sale to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants. The aftermarket ECM programmers render inoperative the OEM-certified ECM programming and replace it with programming that alters fuel injection and other elements of design that can lead to significant emission increases compared to the OEM-certified programming. In addition, the aftermarket ECM programmers sold by Keystone defeat the OEM-certified ECM programming by overriding the OBD functions required by regulation under the CAA. The delete pipes, EGR removal kits, and air pump idler brackets sold by Keystone physically replace emission control devices such as air pumps, DPFs, DOCs, SCRs, and EGR systems.

The requirements of Title II, including the prohibition of section 203(a)(3)(B), against defeat devices, apply to a "motor vehicle" or "motor vehicle engine." Keystone may claim that its products are for off-road or competition use, and therefore not used on "motor vehicles" subject to the Title II requirements, but there is no use-based exemption under section 203(a) or under

the definition of motor vehicle in section 216(2) of the Act.[16] Although Keystone sold parts that were advertised for "off road use only" or "race use only," Keystone knew or should have known that these products were, in fact, offered for sale for "motor vehicles" or "motor vehicle engines." These products were designed and marketed to alter the OEM configuration certified by EPA for motor vehicles of a specific make, model, and year. For example, the aFe POWER 46-90076 EGR Track Kit is advertised for "race only," but it is specifically designed to remove the EGR system from model year 2003-2007 Ford F250/350 6.0L certified motor vehicles.

Through the sale of these EGR removal kits, delete pipes, and tuners, Keystone rendered inoperative the OEM's hardware and software. These parts that Keystone sold change motor vehicle elements of design and allow them to function with altered inputs from emissions control devices. Therefore, Keystone knew or should have known that they sold and offered for sale parts or components for motor vehicles and motor vehicle engines with a principal effect of bypassing, defeating, or rendering inoperative devices or elements of design that control emissions of regulated air pollutants. [17]

Response to Request for Information

The violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), described in this NOV are based, in part, on Keystone's responses to the EPA's Request for Information letter ("RFI"), issued to Keystone on July 11, 2017, under section 208(a) of the CAA, 42 U.S.C. § 7542(a). As stated in the RFI, Keystone must promptly supplement its response in the event that Keystone learns that it possesses responsive information not yet produced, or gains possession, custody, or control of responsive information beyond the information that has already been provided in response to the RFI. For example, if the number of sales of the products listed in Attachment A has increased and/or the number of such products held in inventory has changed, Keystone should supplement its response to the RFI. Furthermore, Keystone Automotive certified under penalty of law on September 8, 2017, that the information provided is true and complete.

Enforcement

The EPA may bring an enforcement action for violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), under its administrative authority or request that the United States Department of Justice file a civil complaint in federal district court.[18] Persons who violate section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), may be subject to an injunction and/or civil penalty of up to $4,619 for each violation.[19]

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[16] CAA § 216(2); 42 U.S.C. § 7550(2); *see also* 40 C.F.R. § 85.1703 (further defining "motor vehicle").
[17] EPA has initiated enforcement actions that are now concluded for similar operations. *See, e.g., In re H & S Performance, LLC*, Consent Agreement and Final Order (EAB Dec. 17, 2015) (CAFO resolving civil liability for purveyors of custom software defeat devices that utilized Bully Dog platforms); *see also United States v. Edge Products, LLC.*, No. 1:13cv00010-TS (Dist. Utah April 23, 2013); *United States v. Casper's Electronics, Inc.*, No. 1:06cv3542 (N.D. Ill Aug. 28, 2007).
[18] CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524.
[19] *Id.*; the EPA has implemented statutorily-mandated inflation adjustments by periodically updating maximum penalty levels as codified at 40 C.F.R. § 19.4.

The EPA may also bring an enforcement action for violations of section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), for failure provide information required under section 208(a) of the CAA, 42 U.S.C. § 7542(a), under its administrative authority or request that the United States Department of Justice file a civil complaint in federal district court.[20] Persons who violate section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), may be subject to an injunction and/or civil penalty of up to $46,192 per day of violation.[21]

The EPA is available to discuss this matter with you in further detail upon your request. Please have your attorney contact Meetu Kaul, the EPA attorney assigned to this matter, within 10 days of receipt of this Notice of Violation. Ms. Kaul can be reached at (202) 564-5472 or Kaul.Meetu @epa.gov.

Sincerely,

Phillip A. Brooks
Director
Air Enforcement Division
Office of Civil Enforcement

Cc (via e-mail):
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1120 Lake Street
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[20] CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524.
[21] *Id.*; 40 C.F.R. § 19.4.

## Attachment A: Detailed List of Defeat Devices Sold by Keystone

| Vendor Name | Part # | Description | Type of Part | Quantity Sold | Motor Vehicle Applications |
|---|---|---|---|---|---|
| AFE | 4690076 | EGR TRACK KIT | EGR delete | 151 | 2003-2007 Ford F250/350 6.0L |
| AFE | 4943036 | FORD P S F-250 350 6.7L 2 | Exhaust pipe | 94 | 2011-2017 Ford F250/350 6.7L |
| AFE | 4690072 | MANIFOLDS EGR COOLER | EGR delete | 76 | 2010-2012 Dodge2500/3500/4500/5500 Cummins 6.7L; 2011-2012 Dodge RAM |
| AFE | 4902010 | DODGE 6.7L DPF/CAT DELETE | Exhaust pipe | 24 | 2007-2012 Dodge 2500/3500 Cummins 6.7L |
| AFE | 4904021 | EXHAUST SYSTMS PIPE | Exhaust pipe | 13 | 2011-2015 Chevy Silverado; GMC Sierra 6.6L |
| AFE | 4904014 | EXHAUST SYSTMS PIPE | Exhaust pipe | 10 | 2007-2010 Chevy Silverado; GMC Sierra 6.6L |
| AFE | 4904010 | EXHAUST SYSTMS PIPE | Exhaust pipe | 8 | 2007-2010 Chevy Silverado; GMC Sierra 6.6L |
| AFE | 4904015 | EXHAUST SYSTMS PIPE | Exhaust pipe | 7 | 2007-2010 Chevy Silverado; GMC Sierra 6.6L |
| AFE | 4904022 | EXHAUST SYSTMS PIPE | Exhaust pipe | 6 | 2011-2015 GM Duramax 6.6L |
| AFE | 4836604HN | DOWN-PIPE W/O CAT | Exhaust pipe | 3 | 2016-2017 Honda Civic 1.5L |
| AFE | 4843020HN | TWISTEDSTEEL EXHAUST | Exhaust pipe | 2 | 2017-2018 Ford F150 Raptor 3.5L Gas |
| AFE | 4836311 | EXH DP; BMW 335I (F30) 12 | Exhaust pipe | 1 | 2012-2013 BMW 335i 3.0L |
| B&B EXHAUST | FDOM0335 | CTS-V CAT TEST PIPES FOR | Exhaust pipe | 1 | 2009-2014 Cadillac |
| BD DIESEL | 1090001 | EGR DELETE KIT FORD 6.0L | EGR delete | 652 | 2003-2007 Ford 6.0L Powerstroke |
| BD DIESEL | 1090011 | EGR COOLER DELETE KIT | EGR delete | 56 | 2007-2008 Dodge 6.7L Cummins |
| BORLA | 60627 | 15-16 F-150 3.5L DOWNPIPE | Exhaust pipe | 9 | 2015-2016 Ford F150 |
| BORLA | 60629 | 11-14 F-150 3.5L DOWNPIPE | Exhaust pipe | 1 | 2011-2014 Ford F150 |
| BULLY DOG | 40420 | GT DIESEL | Tuner | 3,407 | various |
| CORSA EXHST | 25018 | DB DIESEL DWNPIPE DURAMAX | Exhaust pipe | 3 | 2001-2005 Silverado/Sierra 2500/3500 6.6L Duramax |
| DC SPORTS | MCD6011 | CAT DELETE MITSUBISHI | Exhaust pipe | 1 | Mitsubishi Lancer Evolution 10 / Ralliart 2008-2013 |
| DC SPORTS | SCD7049 | POLISHED S.S. CAT-DELETE | Exhaust pipe | 1 | Toyota Scion FRS |
| INJEN | SES1204DP | 08 WRXSTI 2.5DOWNPIPE | Exhaust pipe | 1 | 2008-2014 Subaru WRX |
| INJEN | SES1205DP | 08 WRXSTI 2.5 DOWNPIPE | Exhaust pipe | 1 | 2008-2014 Subaru WRX & 2009-2011 Forester |
| KOOKS | 9125BO | STAINLESS STEEL AIR PLATE | EGR delete | 1 | 1997-2004 Chevy LS1 Engines |
| KOOKS | 9126BO | STAINLESS STEEL AIR PLATE | EGR delete | 1 | 1997-2004 Chevy LS1 Engines |

| Vendor Name | Part # | Description | Type of Part | Quantity Sold | Motor Vehicle Applications |
|---|---|---|---|---|---|
| MBRP | S6212PLM | F-250/3506.0L 03-07 | Exhaust pipe | 1,952 | 2003-2007 Ford Powerstroke 6.0L |
| MBRP | S6126409 | XP D EX CUM 04.5-07 | Exhaust pipe | 158 | 2003-2007 Ford Powerstroke 6.0L |
| MBRP | S6004409 | CHEV 2500/3500 SYS 01-06 | Exhaust pipe | 134 | 2001-2007 GM 6.6L Duramax |
| MBRP | FAL414 | CAT CONV TEST PIPE ALUM | Exhaust pipe | 123 | 2003-2007 Ford F-250/350 6.0L |
| MBRP | S6212409 | F250/F350 OFF ROAD 03-06 | Exhaust pipe | 106 | 2003-2007 Ford Powerstroke 6.0L |
| MBRP | DAL417 | DODGE 600 CT PIIPE AL | Exhaust pipe | 83 | 2004-2007 Dodge Cummins |
| MBRP | DS9417 | CUM600 4' CAT CON PIPE | Exhaust pipe | 68 | 2004-2007 Dodge Cummins |
| MBRP | FS9414 | CAT CON TEST PIPE 03-06 | Exhaust pipe | 66 | 2003-2007 Ford F250/350 6.0L Powerstroke |
| MBRP | S6216AL | EXCURSION 6.0L 03-05 | Exhaust pipe | 54 | 2003-2005 Ford Excursion Powerstroke 6.0L |
| MBRP | S6020409 | 5" OFF ROAD SINGLE | Exhaust pipe | 49 | 2001-2007 GM 6.6L Duramax |
| MBRP | S60200409 | 5" DOWN PIPE BACK, SINGLE | Exhaust pipe | 17 | 2001-2007 GM 6.6L Duramax |
| MBRP | DAL435 | 4"DWNPIPE DDGE 6.7L 07-10 | Exhaust pipe | 2 | 2007-2012 Dodge 6.7L Cummins |
| MBRP | CFGS016 | 3DOWN PIPE W/O CAT | Exhaust pipe | 1 | Focus RS |
| PROFORM | 68110 | AIRPUMPIDLRBRKT302/351 | Air pump delete | 463 | Ford Mustang 302 & 351W |
| SCT | 7015 | X4 FORD POWER FLASH DEVIC | Tuner | 6,039 | 1999-2016 Ford Powerstroke |
| SCT | 5015P | LIVEWIRE TS FORD PROGRAM & MONITOR | Tuner | 860 | Ford w/ various liter sizes |
| SCT | 7416 | X4 GM POWER FLASH DEVICE | Tuner | 338 | 2006-2010 GM 6.6L Duramax |
| SCT | 3015 | X3 POWERFLASH PRELOADED | Tuner | (6) | 1999-2012 Ford Powerstroke, many liter sizes |
| WEIAND | 9007 | EGR BLK OFF PLATE CHEV | EGR delete | 324 | Chevrolet |